

BEFORE THE  
BOARD OF VOCATIONAL NURSING AND PSYCHIATRIC TECHNICIANS  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

In the Matter of the Petition for  
Reinstatement of License of:

OAH No. 2012101095

POTHINEA MARIA LOCKETT

Petitioner.

**DECISION**

This matter was heard on November 8, 2012, before a quorum of the Board of Vocational Nursing and Psychiatric Technicians (Board), Department of Consumer Affairs, State of California, in Sacramento, California. Administrative Law Judge Coren D. Wong, Office of Administrative Hearings, State of California, presided.

Jeffrey M. Phillips, Deputy Attorney General, appeared pursuant to Business and Professions Code section 2878.7, subdivision (b).

Petitioner Pothinea Maria Lockett represented herself.

Evidence was received, the record was closed, and the matter was submitted for decision on November 8, 2012.

**SUMMARY**

Petitioner seeks reinstatement of her vocational nurse license, which was revoked effective April 24, 2008. As discussed below, she did not establish sufficient rehabilitation to justify reinstating her license. Therefore, her Petition for Reinstatement of License is denied.

**FACTUAL FINDINGS**

1. On June 14, 2002, the Board issued petitioner Vocational Nurse License No. VN 199992 (license). The license expired May 31, 2008, and has not been renewed.

2. The Board revoked petitioner's license effective April 24, 2008, on the grounds she was convicted of crimes that are substantially related to the qualifications, functions, or duties of a vocational nurse and engaged in unprofessional misconduct as follows:

a. On June 28, 2005, petitioner had a pipe used for smoking cocaine in her possession;<sup>1</sup>

b. On June 1, 2006, petitioner was convicted of a felony violation Health and Safety Code section 11377, subdivision (a), possession of methamphetamine; a misdemeanor violation of Health and Safety Code section 11550, subdivision (a), being under the influence of a controlled substance; and a misdemeanor violation of Health and Safety Code section 11364, possession of drug paraphernalia. The circumstances surrounding the convictions were that on December 1, 2004, petitioner was found in a dirt field. She admitted to being under the influence of rock cocaine to police officers, and methamphetamine and a smoking pipe were found in her possession.

c. On February 25, 2005, petitioner was convicted of a misdemeanor violation of Health and Safety Code section 11550, subdivision (a), being under the influence of a controlled substance. The circumstances surrounding the conviction were that petitioner failed a drug test administered by a police officer on February 22, 2005.

d. On August 21, 2003, petitioner was convicted of a misdemeanor violation of Vehicle Code section 12500, subdivision (a), driving a vehicle without a license. The circumstances of the conviction were that petitioner was issued a traffic citation on June 16, 2003, for driving a car with an expired registration and while her driving privileges were suspended.

3. On July 20, 2012, the Board received petitioner's Petition for Reinstatement of License (Petition). She provided the following explanation for why her license was revoked:

Initially, my license was revoked due to a drug related offense; also not complying with the Nursing Board with a change of address, and violation Health and Safety Code section 11364, subdivision (a), Business and Professional [sic] Code.

4. In response to the question on the Petition about why her Petition should be granted, petitioner wrote the following:

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<sup>1</sup> While petitioner was charged with this crime prior to revocation of her license, she did not appear in court and a bench warrant was issued for her arrest. That warrant remained outstanding until 2011, and on April 20, 2011, she was convicted of a misdemeanor violation of Health and Safety Code section 11364, subdivision (a), possession of a smoking device.

I feel the Board should grant my petition for reinstatement because; [sic] I have completed all the necessary requirements to get my life back on track. I have been and remained sober for seven years. I've had to rely on Public Assistance in order to provide for my family in this economy. Although, I've been able to work which I'm truly grateful to my higher power. Truthfully, the reason I went back to school to obtain my LVN license was so I could better provide for myself and my family.

Even though, it's been a struggle my life has improved with my sobriety. I need a better means of finances in order to provide for myself and my children. Yes, I've made some bad decisions which affected my personal and professional life. I feel that I deserve a second chance. Besides, I feel that nursing is my calling.

5. Petitioner was the sole witness at hearing. She has worked as a caregiver for Angels On Call and Home Instead Senior Care in Palm Desert, California since October 2009 and February 2011, respectively.

6. Petitioner enrolled in The Awareness Program, a drug treatment program, in June 2006 as a condition of criminal probation. She successfully completed the program in March 2007. At hearing, she claimed a sobriety date of February 23, 2005. Such claim, however, is belied by the fact that she was found to be in possession of a pipe used for smoking cocaine on June 28, 2005. While the Petition states petitioner attends Narcotics Anonymous meetings twice a week, she admitted at hearing she has never attended any meetings. She could not explain why she wrote differently on her Petition.

7. Petitioner previously sent the Board several character reference letters. None of the authors, however, explained the extent of his or her knowledge, if any, of petitioner's criminal history and history of using illicit drugs. (See, *Seide v. Committee of Bar Examiners of the State Bar of California* (1989) 49 Cal.2d 933, 940 [a character reference is not probative of rehabilitation if the author is not aware of all facts and circumstances surrounding the acts for which rehabilitation is important].) Therefore, none of the letters were given much weight.

8. When considering a petition for reinstatement, the issue is whether the petitioner has been rehabilitated since her license was revoked. (See, *In re Andreani* (1939) 14 Cal.2d 736, 749 [existence of rehabilitation difficult to establish affirmatively, "but its nonexistence may be 'proved' by a single act."]) The Board has adopted criteria for evaluating any such rehabilitation. California Code of Regulations, title 16, section 2522, provides as follows:

When considering a) the denial of a license under Section 480 of the Business and Professions Code, b) the suspension or

revocation of a license on the ground that a licensee has been convicted of a crime, or c) a petition for reinstatement of a license under Section 2787.7 of the Business and Professions Code, the Board in evaluating the rehabilitation of an individual and his or her present eligibility for a license, will consider the following criteria:

- (1) Nature and severity of the act(s), offense(s), or crime(s) under consideration.
- (2) Actual or potential harm to the public.
- (3) Actual or potential harm to any patient.
- (4) Overall disciplinary record.
- (5) Overall criminal actions taken by any federal, state or local agency or court.
- (6) Prior warnings on record or prior remediation.
- (7) Number and/or variety of current violations.
- (8) Mitigation evidence.
- (9) In case of a criminal conviction, compliance with terms of sentence and/or court-ordered probation.
- (10) Time passed since the act(s) or offense(s) occurred.
- (11) If applicable, evidence of proceedings to dismiss a conviction pursuant to Penal Code section 1203.4.
- (12) Cooperation with the Board and other law enforcement or regulatory agencies.
- (13) Other rehabilitation evidence.

9. Under all the facts and circumstances herein, it would be contrary to public health, safety, and welfare to reinstate petitioner's vocational nurse license at this time. She did not produce sufficient credible evidence of her rehabilitation since her license was revoked more than four years ago. Therefore, petitioner did not establish she can be reinstated as a vocational nurse without risk of harm to the public, and her Petition for Reinstatement of License must be denied.

## LEGAL CONCLUSIONS

1. Business and Professions Code section 2878.7 provides the following about a petition for reinstatement of license:

(a) A person whose license has been revoked, suspended, surrendered, or placed on probation, may petition the board for reinstatement or modification of the penalty, including modification or termination of probation, after a period not less than the following minimum periods has elapsed from the effective date of the disciplinary order or if any portion of the order is stayed by the board itself or by the superior court, from the date the disciplinary action is actually implemented in its entirety:

(1) Except as otherwise provided in this section, at least three years for the reinstatement of a license that was revoked or surrendered, except that the board may, in its sole discretion, specify in its order a lesser period of time, which shall be no less than one year, to petition for reinstatement.

(2) At least two years for the early termination of a probation period of three years or more.

(3) At least one year for the early termination of a probation period of less than three years.

(4) At least one year for the modification of a condition of probation, or for the reinstatement of a license revoked for mental or physical illness.

(b) The board shall give notice to the Attorney General of the filing of the petition. The petitioner and the Attorney General shall be given timely notice by letter of the time and place of the hearing on the petition, and an opportunity to present both oral and documentary evidence and argument to the board. The petitioner shall at all times have the burden of proof to establish by clear and convincing evidence that he or she is entitled to the relief sought in the petition.

(c) The board itself or the administrative law judge, if one is designated by the board, shall hear the petition and shall prepare a written decision setting forth the reasons supporting the decision.

(d) The board may grant or deny the petition or may impose any terms and conditions that it reasonably deems appropriate as a condition of reinstatement or reduction of penalty.

(e) No petition shall be considered while the petitioner is under sentence for any criminal offense, including any period during which the petitioner is on court-imposed probation or parole or subject to an order of registration pursuant to Section 290 of the Penal Code. No petition shall be considered while there is an accusation or petition to revoke probation pending against the petitioner.

(f) Except in those cases where the petitioner has been disciplined for a violation of Section 822, the board may in its discretion deny without hearing or argument any petition that is filed pursuant to this section within a period of two years from the effective date of a prior decision following a hearing under this section.

(g) Nothing in this section shall be deemed to alter the provisions of Sections 822 and 823.

2. For the reasons discussed in Factual Finding 9, petitioner failed to establish by clear and convincing evidence rehabilitation sufficient to reinstate her vocational nurse license. Therefore, her Petition for Reinstatement of License is denied.

#### ORDER

Petitioner Pothinea Maria Lockett's Petition for Reinstatement of License is DENIED.

This Decision shall become effective on **FEB 20 2013**

IT IS SO ORDERED **FEB 05 2013**



TODD D'BRAUNSTEIN, P.T.

President

Board of Vocational Nursing &  
Psychiatric Technicians